

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING JUVENILE MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-120 of the general
2 statutes, as amended by section 18 of public act
3 97-319, is repealed and the following is
4 substituted in lieu thereof:
5 The terms used in this chapter shall, in its
6 interpretation and in the interpretation of other
7 statutes, be defined as follows: (1) "Child" means
8 any person under sixteen years of age AND, FOR
9 PURPOSES OF DELINQUENCY MATTERS, "CHILD" MEANS ANY
10 PERSON (A) UNDER SIXTEEN YEARS OF AGE OR, (B)
11 SIXTEEN YEARS OF AGE OR OLDER WHO, PRIOR TO
12 ATTAINING SIXTEEN YEARS OF AGE, HAS VIOLATED ANY
13 FEDERAL OR STATE LAW OR MUNICIPAL OR LOCAL
14 ORDINANCE, OTHER THAN AN ORDINANCE REGULATING
15 BEHAVIOR OF A CHILD IN A FAMILY WITH SERVICE
16 NEEDS, AND, SUBSEQUENT TO ATTAINING SIXTEEN YEARS
17 OF AGE, VIOLATES ANY ORDER OF THE SUPERIOR COURT
18 OR ANY CONDITION OF PROBATION ORDERED BY THE
19 SUPERIOR COURT WITH RESPECT TO SUCH DELINQUENCY
20 PROCEEDING; (2) "youth" means any person sixteen
21 to eighteen years of age; (3) "abused" means that
22 a child or youth (A) has had physical injury or
23 injuries inflicted upon him other than by

24 accidental means, or (B) has injuries which are at
25 variance with the history given of them, or (C) is
26 in a condition which is the result of maltreatment
27 such as, but not limited to, malnutrition, sexual
28 molestation or exploitation, deprivation of
29 necessities, emotional maltreatment or cruel
30 punishment; (4) a child may be found "mentally
31 deficient" who, by reason of a deficiency of
32 intelligence, which has existed from birth or from
33 early age, requires, or will require, for his
34 protection or for the protection of others,
35 special care, supervision and control; (5) a child
36 may be [found] CONVICTED AS "delinquent" [(A)] who
37 has violated (A) any federal or state law or
38 municipal or local ordinance, other than an
39 ordinance regulating behavior of a child in a
40 family with service needs, [as defined in this
41 section or (B) who has violated] (B) any order of
42 the Superior Court OR (C) CONDITIONS OF PROBATION
43 AS ORDERED BY THE COURT; (6) a child or youth may
44 be found "dependent" whose home is a suitable one
45 for him, save for the financial inability of his
46 parents, parent, guardian or other person
47 maintaining such home, to provide the specialized
48 care his condition requires; (7) a "family with
49 service needs" means a family which includes a
50 child who (A) has without just cause run away from
51 his parental home or other properly authorized and
52 lawful place of abode; (B) is beyond the control
53 of his parent, parents, guardian or other
54 custodian; (C) has engaged in indecent or immoral
55 conduct; (D) is a truant or habitual truant or
56 who, while in school, has been continuously and
57 overtly defiant of school rules and regulations;
58 or (E) is thirteen years of age or older and has
59 engaged in sexual intercourse with another person
60 and such other person is thirteen years of age or
61 older and not more than two years older or younger
62 than such child; (8) a child or youth may be found
63 "neglected" who (A) has been abandoned or (B) is
64 being denied proper care and attention,
65 physically, educationally, emotionally or morally
66 or (C) is being permitted to live under
67 conditions, circumstances or associations
68 injurious to his well-being, or (D) has been
69 abused; (9) a child or youth may be found "uncared
70 for" who is homeless or whose home cannot provide
71 the specialized care which his physical, emotional

72 or mental condition requires. For the purposes of
73 this section the treatment of any child by an
74 accredited Christian Science practitioner in lieu
75 of treatment by a licensed practitioner of the
76 healing arts, shall not of itself constitute
77 neglect or maltreatment; (10) "delinquent act"
78 means the violation of any federal or state law or
79 municipal or local ordinance, other than an
80 ordinance regulating the behavior of a child in a
81 family with service needs, or the violation of any
82 order of the Superior Court; (11) "serious
83 juvenile offense" means (A) the violation by a
84 child, including attempt or conspiracy to violate
85 sections 21a-277, 21a-278, 29-33, 29-34, 29-35,
86 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392,
87 inclusive, 53a-54a to 53a-57, inclusive, 53a-59 to
88 53a-60c, inclusive, 53a-70 to 53a-71, inclusive,
89 53a-72b, 53a-86, 53a-92 to 53a-94a, inclusive,
90 53a-95, 53a-101, 53a-102a, 53a-103a, 53a-111 to
91 53a-113, inclusive, subdivision (1) of subsection
92 (a) of section 53a-122, subdivision (3) of
93 subsection (a) of section 53a-123, 53a-134,
94 53a-135, 53a-136a, 53a-166, 53a-167c, subsection
95 (a) of section 53a-174, 53a-196a, 53a-211,
96 53a-212, 53a-216 or 53a-217b, or (B) running away,
97 without just cause, from any secure placement
98 other than home while referred as a delinquent
99 child to the Office of Alternative Sanctions or
100 committed as a delinquent child to the
101 Commissioner of Children and Families for a
102 serious juvenile offense; (12) "serious juvenile
103 offender" means any child convicted as delinquent
104 for commission of a serious juvenile offense; (13)
105 "serious juvenile repeat offender" means any child
106 charged with the commission of any felony if such
107 child has previously been convicted delinquent at
108 any age for two violations of any provision of
109 title 21a, 29, 53 or 53a which is designated as a
110 felony; (14) "alcohol-dependent child" means any
111 child who has a psychoactive substance dependence
112 on alcohol as that condition is defined in the
113 most recent edition of the American Psychiatric
114 Association's "Diagnostic and Statistical Manual
115 of Mental Disorders"; (15) "drug-dependent child"
116 means any child who has a psychoactive substance
117 dependence on drugs as that condition is defined
118 in the most recent edition of the American
119 Psychiatric Association's "Diagnostic and

120 Statistical Manual of Mental Disorders". No child
121 shall be classified as drug dependent who is
122 dependent (A) upon a morphine-type substance as an
123 incident to current medical treatment of a
124 demonstrable physical disorder other than drug
125 dependence, or (B) upon amphetamine-type,
126 ataractic, barbiturate-type, hallucinogenic or
127 other stimulant and depressant substances as an
128 incident to current medical treatment of a
129 demonstrable physical or psychological disorder,
130 or both, other than drug dependence.

131 Sec. 2. Subsection (b) of section 46b-121k of
132 the general statutes is repealed and the following
133 is substituted in lieu thereof:

134 (b) The Office of Alternative Sanctions may
135 contract to establish regional secure residential
136 facilities and regional highly supervised
137 residential and nonresidential facilities for
138 juveniles [sentenced to probation] REFERRED by the
139 court. Such facilities shall operate within
140 contracted-for capacity limits. Such facilities
141 shall be exempt from the licensing requirements of
142 section 17a-145.

143 Sec. 3. Section 46b-127 of the general
144 statutes, as amended by section 1 of public act
145 97-4 and section 21 of public act 97-319, is
146 repealed and the following is substituted in lieu
147 thereof:

148 (a) The court shall automatically transfer
149 from the docket for juvenile matters to the
150 regular criminal docket of the Superior Court the
151 case of any child charged with the commission of a
152 capital felony, a class A or B felony or a
153 violation of section 53a-54d, provided such
154 offense was committed after such child attained
155 the age of fourteen years and counsel has been
156 appointed for such child if such child is
157 indigent. Such counsel may appear with the child
158 but shall not be permitted to make any argument or
159 file any motion in opposition to the transfer. The
160 child shall be arraigned in the regular criminal
161 docket of the Superior Court at the next court
162 date following such transfer. The file of any case
163 so transferred shall remain sealed until the tenth
164 WORKING day following such arraignment unless the
165 state's attorney has filed a motion pursuant to
166 this subsection in which case such file shall
167 remain sealed until the court makes a decision on

168 the motion. A state's attorney may, not later than
169 ten working days after such arraignment, file a
170 motion to transfer the case of any child charged
171 with the commission of a class B felony to the
172 docket for juvenile matters for [disposition]
173 PROCEEDINGS in accordance with the provisions of
174 this chapter. The court sitting for the regular
175 criminal docket shall, after hearing and not later
176 than ten working days after the filing of such
177 motion, decide such motion.

178 (b) Upon motion of a juvenile prosecutor and
179 [approval by] ORDER OF the court, the case of any
180 child charged with the commission of a class C or
181 D felony or an unclassified felony shall be
182 transferred from the docket for juvenile matters
183 to the regular criminal docket of the Superior
184 Court, provided such offense was committed after
185 such child attained the age of fourteen years and
186 the court finds ex parte that there is probable
187 cause to believe the child has committed the act
188 for which he is charged. The file of any case so
189 transferred shall remain sealed until such time as
190 the court sitting for the regular criminal docket
191 accepts such transfer. The court sitting for the
192 regular criminal docket may return any such case
193 to the docket for juvenile matters NOT LATER THAN
194 TEN WORKING DAYS AFTER THE DATE OF THE TRANSFER
195 for proceedings in accordance with the provisions
196 of this chapter. The child shall be arraigned in
197 the regular criminal docket of the Superior Court
198 [at] BY the next court date following such
199 transfer.

200 (c) Upon the effectuation of the transfer,
201 such child shall stand trial and be sentenced, if
202 convicted, as if he were sixteen years of age.
203 Such child shall receive credit against any
204 sentence imposed for time served in a juvenile
205 facility prior to the effectuation of the
206 transfer. A child who has been transferred may
207 enter a guilty plea to a lesser offense if the
208 court finds that such plea is made knowingly and
209 voluntarily. Any child transferred to the regular
210 criminal docket who pleads guilty to a lesser
211 offense shall not resume his status as a juvenile
212 regarding said offense. If the action is dismissed
213 or nolle or if such child is found not guilty of
214 the charge for which he was transferred OR OF ANY
215 LESSER INCLUDED OFFENSES, the child shall resume

168 the motion. A state's attorney may, not later than
169 ten working days after such arraignment, file a
170 motion to transfer the case of any child charged
171 with the commission of a class B felony to the
172 docket for juvenile matters for [disposition]
173 PROCEEDINGS in accordance with the provisions of
174 this chapter. The court sitting for the regular
175 criminal docket shall, after hearing and not later
176 than ten working days after the filing of such
177 motion, decide such motion.

178 (b) Upon motion of a juvenile prosecutor and
179 [approval by] ORDER OF the court, the case of any
180 child charged with the commission of a class C or
181 D felony or an unclassified felony shall be
182 transferred from the docket for juvenile matters
183 to the regular criminal docket of the Superior
184 Court, provided such offense was committed after
185 such child attained the age of fourteen years and
186 the court finds ex parte that there is probable
187 cause to believe the child has committed the act
188 for which he is charged. The file of any case so
189 transferred shall remain sealed until such time as
190 the court sitting for the regular criminal docket
191 accepts such transfer. The court sitting for the
192 regular criminal docket may return any such case
193 to the docket for juvenile matters NOT LATER THAN
194 TEN WORKING DAYS AFTER THE DATE OF THE TRANSFER
195 for proceedings in accordance with the provisions
196 of this chapter. The child shall be arraigned in
197 the regular criminal docket of the Superior Court
198 [at] BY the next court date following such
199 transfer.

200 (c) Upon the effectuation of the transfer,
201 such child shall stand trial and be sentenced, if
202 convicted, as if he were sixteen years of age.
203 Such child shall receive credit against any
204 sentence imposed for time served in a juvenile
205 facility prior to the effectuation of the
206 transfer. A child who has been transferred may
207 enter a guilty plea to a lesser offense if the
208 court finds that such plea is made knowingly and
209 voluntarily. Any child transferred to the regular
210 criminal docket who pleads guilty to a lesser
211 offense shall not resume his status as a juvenile
212 regarding said offense. If the action is dismissed
213 or nolle or if such child is found not guilty of
214 the charge for which he was transferred OR OF ANY
215 LESSER INCLUDED OFFENSES, the child shall resume

216 his status as a juvenile until he attains the age
217 of sixteen years.

218 (d) Any child transferred to the regular
219 criminal docket of the Superior Court who is
220 detained shall be in the custody of the
221 Commissioner of Correction upon the finalization
222 of such transfer. A transfer shall be final (1)
223 upon the expiration of ten working days after the
224 arraignment if no motion has been filed by the
225 state's attorney pursuant to subsection (a) of
226 this section or, if such motion has been filed,
227 upon the decision of the court to deny such
228 motion, or (2) upon the court accepting the
229 transfer pursuant to subsection (b) of this
230 section. Any child returned to the docket for
231 juvenile matters who is detained shall be in the
232 custody of the Judicial Department.

233 (e) The transfer of a child to a Department
234 of Correction facility shall be limited to the
235 provisions of subsection (d) of this section and
236 said subsection shall not be construed to permit
237 the transfer of or otherwise reduce or eliminate
238 any other population of juveniles in detention or
239 confinement within the Judicial Department or the
240 Department of Children and Families.

241 Sec. 4. Section 46b-133 of the general
242 statutes is repealed and the following is
243 substituted in lieu thereof:

244 (a) Nothing in this part shall be construed
245 as preventing the arrest of a child, with or
246 without a warrant, as may be provided by law, or
247 as preventing the issuance of warrants by judges
248 in the manner provided by section 54-2a, except
249 that no child shall be taken into custody on such
250 process except on apprehension in the act, or on
251 speedy information, or in other cases when the use
252 of such process appears imperative. Whenever a
253 child is arrested and charged with a crime, such
254 child may be required to submit to the taking of
255 his photograph, physical description and
256 fingerprints. Notwithstanding the provisions of
257 section 46b-124, [the photograph of] INFORMATION
258 CONCERNING any child arrested for the commission
259 of a capital felony or class A felony, INCLUDING
260 THE CUSTODY STATUS OF SUCH CHILD, may be disclosed
261 to the public.

262 (b) Whenever a child is brought before a
263 judge of the Superior Court, such judge shall

264 immediately have the case proceeded upon as a
265 juvenile matter. Such judge may admit such child
266 to bail or release him in the custody of his
267 parent or parents, his guardian or some other
268 suitable person to appear before the Superior
269 Court when ordered. If detention becomes necessary
270 or desirable, the same shall be in the manner
271 prescribed by this chapter.

272 (c) Upon the arrest of any child by an
273 officer, such officer may release him to the
274 custody of his parent or parents, guardian or some
275 other suitable person or agency or may immediately
276 turn him over to a juvenile detention center. When
277 a child is arrested [or referred] for the
278 commission of a delinquent act and the child is
279 not placed in detention OR REFERRED TO A
280 DIVERSIONARY PROGRAM, an officer shall serve a
281 written complaint and summons on the child and his
282 parent, guardian or other person having control of
283 the child. Such parent, guardian or other person
284 shall execute a written promise to appear in court
285 at the time and place specified in such summons.
286 If any person so summoned wilfully fails to appear
287 in court at the time and place so specified, the
288 court may issue a warrant for the child's arrest
289 or a capias to assure the appearance in court of
290 such parent, guardian or other person. The court
291 may punish for contempt, as provided in section
292 46b-121, AS AMENDED BY THIS ACT, any parent,
293 guardian or other person so summoned who wilfully
294 fails to appear in court at the time and place so
295 specified.

296 (d) The court or detention supervisor may
297 turn such child over to a youth service program
298 created for such purpose, if such course is
299 practicable, or such child may be detained pending
300 a hearing which shall be held on the business day
301 next following his arrest. No child shall be
302 detained after such hearing or held in detention
303 pursuant to a court order unless it appears from
304 the available facts that there is probable cause
305 to believe that the child has committed the acts
306 alleged and that there is (1) a strong probability
307 that the child will run away prior to court
308 hearing or disposition, (2) a strong probability
309 that the child will commit or attempt to commit
310 other offenses injurious to him or to the
311 community before court disposition, (3) probable

312 cause to believe that the child's continued
313 residence in his home pending disposition will not
314 safeguard the best interests of the child or the
315 community because of the serious and dangerous
316 nature of the act or acts he is alleged to have
317 committed, (4) a need to hold the child for
318 another jurisdiction or (5) a need to hold the
319 child to assure his appearance before the court,
320 in view of his previous failure to respond to the
321 court process. Such probable cause may be shown by
322 sworn affidavit in lieu of testimony. No child
323 shall be released from detention who is alleged to
324 have committed a serious juvenile offense except
325 by order of a judge of the Superior Court. In no
326 case shall a child be confined in a community
327 correctional center or lockup, or in any place
328 where adults are or may be confined, except in the
329 case of a nursing infant; nor shall any child at
330 any time be held in solitary confinement. When a
331 female child is held in custody, she shall, as far
332 as possible, be in the charge of a woman
333 attendant.

334 (e) The police officer who brings a child
335 into detention shall have first notified, or made
336 a reasonable effort to notify, the parents or
337 guardian of the child in question of the intended
338 action and shall file at the detention center a
339 signed statement setting forth the alleged
340 delinquent conduct of the child. Unless the arrest
341 was for a serious juvenile offense, the child may
342 be released by a detention supervisor to the
343 custody of his parent or parents, guardian or some
344 other suitable person.

345 (f) In conjunction with any order of release
346 from detention the court may, when it has reason
347 to believe a child is alcohol-dependent or
348 drug-dependent as defined in section 46b-120, AS
349 AMENDED BY THIS ACT, and where necessary,
350 reasonable and appropriate, order the child to
351 participate in a program of periodic alcohol or
352 drug testing and treatment as a condition of such
353 release. The results of any such alcohol or drug
354 test shall be admissible only for the purposes of
355 enforcing the conditions of release from
356 detention.

357 (g) Whenever the population of a juvenile
358 detention center equals or exceeds the maximum
359 capacity for such center, as determined by the

360 Judicial Department, the detention supervisor in
361 charge of intake shall only admit a child who: (1)
362 Is charged with the commission of a serious
363 juvenile offense, (2) is the subject of an ORDER
364 TO DETAIN OR AN outstanding court order to take
365 such child into custody, (3) is ordered by a court
366 to be held in detention, or (4) is being
367 transferred to such center to await a court
368 appearance.

369 Sec. 5. Section 46b-133a of the general
370 statutes is repealed and the following is
371 substituted in lieu thereof:

372 (a) A nolle prosequi may not be entered as to
373 any [charge] COUNT of delinquency if the juvenile
374 objects to the nolle prosequi and demands either a
375 trial or dismissal, except with respect to
376 prosecutions in which a nolle prosequi is entered
377 upon a representation to the court by the juvenile
378 prosecutor that a material witness has died,
379 disappeared or become disabled or that material
380 evidence has disappeared or has been destroyed and
381 that a further investigation is therefore
382 necessary.

383 (b) Whenever a nolle prosequi has been
384 entered as to any [charge] COUNT of delinquency,
385 or whenever any [charge] COUNT of delinquency has
386 been dismissed without prejudice, if at least
387 thirteen months have elapsed since such nolle or
388 dismissal without prejudice, all police and court
389 records pertaining to such [charge] COUNT shall be
390 erased. Whenever any such [charge] COUNT has been
391 continued at the request of the juvenile
392 prosecutor and a period of thirteen months has
393 elapsed since the granting of such continuance
394 during which period there has been no prosecution
395 or other disposition of the matter, the [charge]
396 COUNT shall be construed to have been nolle as of
397 the date of termination of such thirteen-month
398 period and such erasure may thereafter be effected
399 as provided in this subsection for nolle cases.

400 Sec. 6. Section 46b-140 of the general
401 statutes is repealed and the following is
402 substituted in lieu thereof:

403 (a) In determining the appropriate
404 disposition of a child convicted as delinquent,
405 the court shall consider: (1) The seriousness of
406 the offense, including the existence of any
407 aggravating factors such as the use of a firearm

408 in the commission of the offense and the impact of
409 the offense on any victim; (2) the child's record
410 of delinquency; (3) the child's willingness to
411 participate in available programs; (4) the
412 existence of other mitigating factors; and (5) the
413 culpability of the child in committing the offense
414 including the level of the child's participation
415 in the planning and carrying out of the offense.

416 (b) Upon conviction of a child as delinquent,
417 the court may: (1) Place the child in the care of
418 any institution or agency which is permitted by
419 law to care for children; (2) order the child to
420 participate in an alternative incarceration
421 program; (3) order the child to participate in a
422 wilderness school program operated by the
423 Department of Children and Families; (4) order the
424 child to participate in a youth service bureau
425 program; (5) [order the child to remain in his own
426 home or in the custody of a relative or any other
427 fit person subject to the supervision of the
428 probation officer] PLACE THE CHILD ON PROBATION;
429 (6) order the child or the parents or guardian of
430 the child or both to make restitution to the
431 victim of the offense in accordance with
432 subsection (d) of this section; (7) order the
433 child to participate in a program of community
434 service in accordance with subsection (e) of this
435 section; or (8) withhold or suspend execution of
436 any judgment.

437 (c) The court may order, as a condition of
438 probation, that the child (1) RESIDE WITH A
439 PARENT, RELATIVE OR GUARDIAN OR IN A SUITABLE
440 FOSTER HOME OR OTHER RESIDENCE APPROVED BY THE
441 COURT, [(1)] (2) attend school and class on a
442 regular basis and comply with school policies on
443 student conduct and discipline, (3) REFRAIN FROM
444 VIOLATING ANY FEDERAL OR STATE LAW OR MUNICIPAL OR
445 LOCAL ORDINANCE, (4) UNDERGO ANY MEDICAL OR
446 PSYCHIATRIC EVALUATION OR TREATMENT DEEMED
447 NECESSARY BY THE COURT, (5) SUBMIT TO RANDOM DRUG
448 OR ALCOHOL TESTING, OR BOTH, [or (2)] (6)
449 participate in a program of [periodic alcohol and
450 drug testing and] ALCOHOL OR DRUG treatment, or
451 both, (7) MAKE RESTITUTION TO THE VICTIM OF THE
452 OFFENSE IN ACCORDANCE WITH SUBSECTION (d) OF THIS
453 SECTION, (8) PARTICIPATE IN AN ALTERNATIVE
454 INCARCERATION PROGRAM OR OTHER PROGRAM ESTABLISHED
455 THROUGH THE OFFICE OF ALTERNATIVE SANCTIONS, (9)

456 PARTICIPATE IN A PROGRAM OF COMMUNITY SERVICE, AND
457 (10) SATISFY ANY OTHER CONDITIONS DEEMED
458 APPROPRIATE BY THE COURT. THE COURT SHALL CAUSE A
459 COPY OF ANY SUCH ORDER TO BE DELIVERED TO THE
460 CHILD, THE CHILD'S PARENTS OR GUARDIAN AND THE
461 CHILD'S PROBATION OFFICER.

462 (d) If the child has engaged in conduct which
463 results in property damage or personal injury, the
464 court may order the child or the parent or parents
465 or guardian of the child, if such parent or
466 parents or guardian had knowledge of and condoned
467 the conduct of the child, or both the child and
468 the parent or parents or guardian, to make full or
469 partial restitution to the victim of such offense,
470 provided the liability of such parent or parents
471 or guardian shall be limited to an amount not
472 exceeding the amount such parent or parents or
473 guardian would be liable for in an action under
474 section 52-572. Restitution may consist of
475 monetary reimbursement for the damage or injury,
476 based on the child's or the parent's, parents' or
477 guardian's ability to pay, as the case may be, in
478 the form of a lump sum or instalment payments,
479 paid to the court clerk or such other official
480 designated by the court for distribution to the
481 victim.

482 (e) The court may order the child to
483 participate in a program of community service
484 under the supervision of the court or any
485 organization designated by the court. Such child
486 shall not be deemed to be an employee and the
487 services of such child shall not be deemed
488 employment.

489 (f) If the court further finds that its
490 probation services or other services available to
491 the court are not adequate for such child, the
492 court shall commit such child to the Department of
493 Children and Families in accordance with the
494 provisions of section 46b-141. Prior to making
495 such commitment, the court shall consult with the
496 department to determine the placement which will
497 be in the best interest of such child.

498 (g) Any child or youth coming within the
499 jurisdiction of the court, who is found to be
500 mentally ill, may be committed by said court to
501 the Commissioner of Children and Families and, if
502 the court convicts a child as delinquent and finds
503 him to be mentally deficient, it may commit him to

504 an institution for mentally deficient children or
505 youth or delinquents. Whenever IT IS FOUND THAT a
506 child convicted by the court as delinquent or
507 adjudged by the court to be a member of a family
508 with service needs WHO is fourteen years of age or
509 older [and is further found to be either mentally
510 deficient or too educationally retarded to] WOULD
511 NOT benefit from continued school attendance, the
512 court may order him to be placed on vocational
513 probation if such court finds that he may properly
514 be employed for part or full-time at some useful
515 occupation and that such employment would be
516 [more] favorable to his welfare, [than commitment
517 to an institution] and the probation officer shall
518 supervise such employment. For the purposes of
519 this section the limitations of subsection (a) of
520 section 31-23 on the employment of minors under
521 the age of sixteen years shall not apply for the
522 duration of such vocational probation.

523 (h) Whenever the court commits a child to the
524 Department of Children and Families, there shall
525 be delivered with the mittimus a copy of the
526 results of the investigations made as required by
527 section 46b-134. The court may, at any time,
528 require from the department in whose care a child
529 has been placed such report as to such child and
530 his treatment.

531 (i) [(1)] If the delinquent act for which the
532 child is committed to the Department of Children
533 and Families is a serious juvenile offense, the
534 court may set a period of time during which the
535 Department of Children and Families shall place
536 such child out of his town of residence at the
537 commencement of such child's commitment.

538 [(2)] The setting of any such time [periods]
539 PERIOD shall be in the form of an order of the
540 court included in the mittimus. For good cause
541 shown in the form of an affidavit annexed thereto,
542 the Department of Children and Families, the
543 parent or guardian of the child or the child may
544 petition the court for temporary modification of
545 any such order not to extend or reduce the term of
546 such placement.

547 Sec. 7. Section 46b-146 of the general
548 statutes is repealed and the following is
549 substituted in lieu thereof:

550 Whenever any child has been found delinquent
551 or a member of a family with service needs, and

552 has subsequently been discharged from the
553 supervision of the Superior Court or from the
554 custody of the Department of Children and Families
555 or from the care of any other institution or
556 agency to whom he has been committed by the court,
557 such child, his parent or guardian, may file a
558 petition with the Superior Court and, if such
559 court finds that at least TWO YEARS OR, IN THE
560 CASE OF A CHILD CONVICTED AS DELINQUENT FOR THE
561 COMMISSION OF A SERIOUS JUVENILE OFFENSE, four
562 years have elapsed from the date of such
563 discharge, [and] THAT no subsequent juvenile
564 proceeding has been instituted against [him and
565 he] SUCH CHILD, THAT SUCH CHILD has not been found
566 guilty of a crime [, if] AND THAT such child has
567 reached sixteen YEARS OF AGE within such
568 [four-year] period, it shall order all police and
569 court records pertaining to such child to be
570 erased. Upon the entry of such an erasure order,
571 all references including arrest, complaint,
572 referrals, petitions, reports and orders, shall be
573 removed from all agency, official and
574 institutional files, and a finding of delinquency
575 or that the child was a member of a family with
576 service needs shall be deemed never to have
577 occurred. The persons in charge of such records
578 shall not disclose to any person information
579 pertaining to the record so erased, except that
580 the fact of such erasure may be substantiated
581 where, in the opinion of the court, it is in the
582 best interests of such child to do so. No child
583 who has been the subject of such an erasure order
584 shall be deemed to have been arrested ab initio,
585 within the meaning of the general statutes, with
586 respect to proceedings so erased. Copies of the
587 erasure order shall be sent to all persons,
588 agencies, officials or institutions known to have
589 information pertaining to the delinquency or
590 family with service needs proceedings affecting
591 such child. Whenever a child is dismissed as not
592 delinquent or as not being a member of a family
593 with service needs, all police and court records
594 pertaining to such charge shall be ordered erased
595 immediately, without the filing of a petition.

596 Sec. 8. (NEW) (a) At any time during the
597 period of probation or suspended commitment, after
598 hearing and for good cause shown, the court may
599 modify or enlarge the conditions, whether

600 originally imposed by the court under this section
601 or otherwise, and may extend the period as deemed
602 appropriate by the court. The court shall cause a
603 copy of any such order to be delivered to the
604 child or youth and to such child or youth's parent
605 or guardian and probation officer.

606 (b) The period of participation in an
607 alternative incarceration program, as a condition
608 of probation or suspended commitment, unless
609 terminated sooner, shall not exceed the original
610 period of probation or suspended commitment.

611 (c) At any time during the period of
612 probation or suspended commitment, the court may
613 issue a warrant for the arrest of a child or youth
614 for violation of any of the conditions of
615 probation or suspended commitment, or may issue a
616 notice to appear to answer to a charge of such
617 violation, which notice shall be personally served
618 upon the child or youth. Any such warrant shall
619 authorize all officers named therein to return the
620 child or youth to the custody of the court or to
621 any suitable juvenile detention facility
622 designated by the court.

623 (d) If such violation is established, the
624 court may continue or revoke the order of
625 probation or suspended commitment or modify or
626 enlarge the conditions and, if such order of
627 probation or suspended commitment is revoked,
628 require the child or youth to serve the commitment
629 imposed or impose any lesser commitment. No such
630 revocation shall be ordered, except upon
631 consideration of the whole record and unless such
632 violation is established by reliable and probative
633 evidence.

634 Sec. 9. (NEW) When deemed in the best
635 interests of a child placed in a juvenile
636 detention center, the administrator of such
637 detention center may authorize, under policies
638 promulgated by the Chief Court Administrator, such
639 medical assessment and treatment and dentistry as
640 is necessary to ensure the continued good health
641 or life of the child. The administrator of the
642 detention center shall make reasonable efforts to
643 inform the child's parents or guardian prior to
644 taking such action, and in all cases shall send
645 notice to the parents or guardian by letter to
646 their last-known address informing them of the
647 actions taken and of the outcome, provided failure

648 to notify shall not affect the validity of the
649 authorization.

650 Sec. 10. Subsection (a) of section 46b-121 of
651 the general statutes is repealed and the following
652 is substituted in lieu thereof:

653 (a) Juvenile matters in the civil session
654 include all proceedings concerning uncared-for,
655 neglected or dependent children and youth within
656 this state, termination of parental rights of
657 children committed to a state agency, matters
658 concerning families with service needs, contested
659 matters involving termination of parental rights
660 or removal of guardian transferred from the
661 Probate Court and the emancipation of minors, but
662 does not include matters of guardianship and
663 adoption or matters affecting property rights of
664 any child or youth over which the Probate Court
665 has jurisdiction, provided appeals from probate
666 concerning adoption, termination of parental
667 rights and removal of a parent as guardian shall
668 be included. Juvenile matters in the criminal
669 session include all proceedings concerning
670 delinquent children in the state AND PERSONS
671 SIXTEEN YEARS OF AGE AND OLDER WHO ARE UNDER THE
672 SUPERVISION OF A JUVENILE PROBATION OFFICER WHILE
673 ON PROBATION OR A SUSPENDED COMMITMENT TO THE
674 DEPARTMENT OF CHILDREN AND FAMILIES, FOR PURPOSES
675 OF ENFORCING ANY COURT ORDERS ENTERED AS PART OF
676 SUCH PROBATION OR SUSPENDED COMMITMENT.

677 Sec. 11. Section 46b-127 of the general
678 statutes, as amended by section 1 of public act
679 97-4 and section 21 of public act 97-319, is
680 repealed and the following is substituted in lieu
681 thereof:

682 (a) [The court shall automatically transfer
683 from the docket for juvenile matters to the
684 regular criminal docket of the Superior Court the]
685 (1) EXCEPT AS PROVIDED IN SUBDIVISION (2) OF THIS
686 SUBSECTION, THE case of any child charged with the
687 commission of a capital felony, a class A or B
688 felony or a violation of section 53a-54d, SHALL BE
689 AUTOMATICALLY TRANSFERRED FROM THE DOCKET FOR
690 JUVENILE MATTERS TO THE REGULAR CRIMINAL DOCKET OF
691 THE SUPERIOR COURT ON THE TENTH WORKING DAY
692 FOLLOWING THE INITIAL COURT APPEARANCE OF SUCH
693 CHILD, provided such offense was committed after
694 such child attained the age of fourteen years and
695 counsel has been appointed for such child if such

696 child is indigent. Such counsel may appear with
697 the child but shall not be permitted to make any
698 argument or file any motion in opposition to the
699 transfer. (2) THE JUVENILE PROSECUTOR MAY, NOT
700 LATER THAN TEN WORKING DAYS AFTER SUCH APPEARANCE,
701 FILE A MOTION TO RETAIN THE CASE OF SUCH CHILD ON
702 THE DOCKET FOR JUVENILE MATTERS FOR PROCEEDINGS IN
703 ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER.
704 THE COURT SHALL, NOT LATER THAN TEN WORKING DAYS
705 AFTER THE FILING OF SUCH MOTION, DECIDE SUCH
706 MOTION. (3) The child shall be arraigned in the
707 regular criminal docket of the Superior Court at
708 the next court date following such transfer. [The
709 file of any case so transferred shall remain
710 sealed until the tenth day following such
711 arraignment unless the state's attorney has filed
712 a motion pursuant to this subsection in which case
713 such file shall remain sealed until the court
714 makes a decision on the motion. A state's attorney
715 may, not later than ten working days after such
716 arraignment, file a motion to transfer the case of
717 any child charged with the commission of a class B
718 felony to the docket for juvenile matters for
719 disposition in accordance with the provisions of
720 this chapter. The court sitting for the regular
721 criminal docket shall, after hearing and not later
722 than ten working days after the filing of such
723 motion, decide such motion.]

724 (b) Upon motion of a juvenile prosecutor and
725 approval by the court, the case of any child
726 charged with the commission of a class C or D
727 felony or an unclassified felony shall be
728 transferred from the docket for juvenile matters
729 to the regular criminal docket of the Superior
730 Court, provided such offense was committed after
731 such child attained the age of fourteen years and
732 the court finds ex parte that there is probable
733 cause to believe the child has committed the act
734 for which he is charged. The file of any case so
735 transferred shall remain sealed until such time as
736 the court sitting for the regular criminal docket
737 accepts such transfer. The court sitting for the
738 regular criminal docket may return any such case
739 to the docket for juvenile matters for proceedings
740 in accordance with the provisions of this chapter.
741 The child shall be arraigned in the regular
742 criminal docket of the Superior Court at the next
743 court date following such transfer.

744 (c) Upon the effectuation of the transfer,
745 such child shall stand trial and be sentenced, if
746 convicted, as if he were sixteen years of age.
747 Such child shall receive credit against any
748 sentence imposed for time served in a juvenile
749 facility prior to the effectuation of the
750 transfer. A child who has been transferred may
751 enter a guilty plea to a lesser offense if the
752 court finds that such plea is made knowingly and
753 voluntarily. Any child transferred to the regular
754 criminal docket who pleads guilty to a lesser
755 offense shall not resume his status as a juvenile
756 regarding said offense. If the action is dismissed
757 or nolleed or if such child is found not guilty of
758 the charge for which he was transferred, the child
759 shall resume his status as a juvenile until he
760 attains the age of sixteen years.

761 (d) Any child transferred to the regular
762 criminal docket of the Superior Court who is
763 detained shall be in the custody of the
764 Commissioner of Correction upon the finalization
765 of such transfer. A transfer shall be final (1)
766 upon the expiration of ten working days after the
767 arraignment if no motion has been filed by the
768 state's attorney pursuant to subsection (a) of
769 this section or, if such motion has been filed,
770 upon the decision of the court to deny such
771 motion, or (2) upon the court accepting the
772 transfer pursuant to subsection (b) of this
773 section. Any child returned to the docket for
774 juvenile matters who is detained shall be in the
775 custody of the Judicial Department.

776 (e) The transfer of a child to a Department
777 of Correction facility shall be limited to the
778 provisions of subsection (d) of this section and
779 said subsection shall not be construed to permit
780 the transfer of or otherwise reduce or eliminate
781 any other population of juveniles in detention or
782 confinement within the Judicial Department or the
783 Department of Children and Families.

784 Sec. 12. Subsection (a) of section 46b-137 of
785 the general statutes is repealed and the following
786 is substituted in lieu thereof:

787 (a) Any admission, confession or statement,
788 written or oral, MADE by a child [to] WHILE IN THE
789 CUSTODY OF AND IN RESPONSE TO INTERROGATION BY a
790 police officer or Juvenile Court official shall be
791 inadmissible in any proceeding concerning the

792 alleged delinquency of the child making such
793 admission, confession or statement unless made by
794 such child in the presence of his parent or
795 parents or guardian and after the parent or
796 parents or guardian and child have been advised
797 (1) of the child's right to retain counsel, or if
798 unable to afford counsel, to have counsel
799 appointed on the child's behalf, (2) of the
800 child's right to refuse to make any statements and
801 (3) that any statements he makes may be introduced
802 into evidence against him.

803 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5696

STATE IMPACT	Indeterminate Cost, Minimal Cost, Can Be Absorbed, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Children and Families, Judicial Department, Criminal Justice Agencies

EXPLANATION OF ESTIMATES:

This bill extends the definition of a delinquent to include any person sixteen years or older who, prior to sixteen, violated a federal, state or local law, and after attaining sixteen years violates an order of the court or a condition of probation. It allows the court to enlarge a term of probation. It also expands the definition of serious juvenile offense to include robbery involving an occupied motor vehicle.

This would result in an indeterminate cost to the Judicial Department associated with additional juvenile probation supervision. In addition, a child committed to the Commissioner of Children and Families due to a conviction for a serious juvenile offense is subject to a longer length of stay as, unlike for lesser offenses, the commissioner does not have sole discretion to discharge these juveniles. To the extent that these changes may result in additional placements and/or a longer average length of stay of children placed in Long Lane School, exacerbation of its current overcrowding problem may result.

The bill's provisions concerning the administration of medical and dental treatment to juveniles in detention would result in minimal absorbable costs to the Judicial Department.

* * * * *

OLR BILL ANALYSIS

sHB 5696

AN ACT CONCERNING JUVENILE MATTERS

SUMMARY: This bill makes a number of changes to the juvenile justice law. It specifies the types of probation the juvenile court can impose and how it may be enforced. It allows the court to continue enforcing probation on a child after he turns 16, the age a child normally ceases to be a juvenile for delinquency purposes.

The bill makes conflicting changes to the procedure for transferring a juvenile to adult court for trial and sentencing as an adult (see COMMENT). It allows a juvenile detention supervisor to provide medical and dental treatment and increases the situations where a juvenile's statements can be introduced in a proceeding. It allows a juvenile who did not commit a serious juvenile offense to have his records erased two years earlier, provided he still meets the other statutory requirements.

Finally, the bill makes several minor and technical changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Juvenile Court Jurisdiction Over 16- and 17-Year Olds

Juvenile court has delinquency jurisdiction over children until they turn 16. The bill allows the court to retain jurisdiction after a child turns 16 if (1) he committed a delinquent act before that age (other than violating a family with service needs (FWSN) order) and (2) after turning 16 violates any court order or condition of probation.

The bill specifically allows a child to be convicted as delinquent for violating of a court-ordered condition of probation.

Juvenile Delinquency Probation

The bill specifically authorizes the court to place a juvenile on probation. Current law allows the court to order a juvenile to remain at home or in a relative's custody under the supervision of a probation officer.

The bill gives the court additional conditions of probation that it may impose. It can require the child to: (1) reside with a guardian or in a suitable foster home or other court-approved residence; (2) refrain from violating laws or ordinances; (3) undergo medical or psychological evaluation or treatment; (4) submit to random drug or alcohol testing (currently it can order periodic testing); (5) make restitution to the victim (a court can already order restitution, the bill allows it to be a condition of probation); (6) participate in an alternative incarceration program or other program of the Office of Alternative Sanctions (OAS); (7) participate in community service; (8) satisfy other conditions the court deems appropriate.

The court must order a copy of any probation order to be delivered to the child, his parents, and his probation officer.

The bill broadens the circumstances under which the court can order certain children on vocational probation. By law, this provision applies to children who are at least age 14 and who have been found delinquent or a member of a FWSN. The bill allows the court to place a child on such probation based on its finding that he would not benefit from further schooling and that the placement would benefit him. It removes a provision that limits this probation to children with mental deficiency or educational retardation and a requirement that such a placement would have to be better for the child than institutionalization.

Enforcement of Probation

The bill authorizes the court, after a hearing and for good cause, to modify or enlarge conditions it has

imposed, including extending their length, anytime during the period of probation or suspended commitment. The court must give a copy of such an order to the same parties that get the original.

Under the bill participation in an alternative incarceration program as a probation or suspended commitment condition cannot exceed the original period of probation or suspended commitment imposed.

If a child or youth violates any condition of probation or suspended commitment, the court can issue an arrest warrant or a notice to appear to answer the violation charge. The child must be personally served such a notice, and the arrest warrant must direct the officers to bring him to court or a suitable juvenile detention facility.

If a violation is established, the court can revoke or continue the probation or suspended commitment and it may modify or enlarge the conditions. It may revoke only based on the whole record and if the violation is established by reliable evidence. If it revokes the order, the court can require the child or youth to serve the commitment originally imposed or a lesser one.

Transfers to Adult Court

The law requires any child accused of a capital felony, a class A or B felony, or arson murder who was age 14 or 15 when he committed the offense to be automatically transferred to adult court. The state's attorney in adult court has 10 working days to file a motion to have a child charged with a class B felony returned to juvenile court. The court has 10 days to hold a hearing and decide on the motion. It also allows for transfers of juveniles accused of class C and D felonies.

Conflicting Provisions. Two sections of the bill amend this statute in conflicting ways.

Section three specifies that the file of a juvenile remains sealed for 10 working days so that it cannot be made public before a state's attorney decides to send it back to juvenile court. It also makes it clear that a child returned to juvenile court is subject to all juvenile proceedings, not just disposition.

Under section 11 of the bill the child's case remains in juvenile court for 10 days following his initial appearance and then is automatically transferred unless the juvenile prosecutor files a motion to retain it there. The court has 10 working days to decide on the motion. This new procedure applies to children charged with capitol felonies, class A felonies, and arson murder, as well as class B felonies.

Other Provisions. The bill requires that in order for a juvenile accused of a class C or D felony to be transferred to adult court, the juvenile court must "order" the transfer not just "approve" a juvenile prosecutor's motion to transfer.

It requires the adult court, if it wishes to return a juvenile class C or D felony case to juvenile court to act within 10 working days. Finally, the bill allows a juvenile whose case was dismissed or nolle or who was found not guilty in adult court of lesser included offenses to resume his legal status as a juvenile. This is already true under current law regarding the charge for which he was transferred.

Medical and Dental Treatment of Children in Detention

The bill allows a juvenile detention center administrator to authorize medical tests and treatment and dental care for a detained child if he follows policies developed by the chief court administrator. The treatment must be necessary to ensure the child's life or continued good health and must be deemed in his best interest.

The administrator must make reasonable efforts to notify the child's parents or guardian ahead of time and must inform them of the actions taken and outcome by letter at their last known address. Failure to provide notice does not affect the validity of the authorization.

Interrogation of Juveniles

By law, statements a child makes to a police officer or juvenile court official are inadmissible unless they are made in the presence of the child's parents or guardian who have been advised of the child's Miranda rights (to counsel, not to make a statement, and that

the statement may be used against him). The bill specifies that this restriction applies only when the child is in custody and being interrogated. Thus, other statements made by the child would be admissible.

Records Erasure

The bill allows a child convicted of delinquency for an offense that is not a serious juvenile offense to have his records erased after two, rather than four years. He must still meet the other requirements for erasure, which are that since his discharge from custody no further juvenile proceedings were brought, he was not convicted of a crime, and he has reached age 16.

Other Changes

The bill makes a number of other changes in juvenile law. It:

1. adds carjacking to the list of serious juvenile offenses;
2. specifies that juveniles can be referred to OAS contracted residential and nonresidential facilities without being sentenced to probation;
3. makes statutory juvenile nolle (decision not to prosecute) provisions apply to "counts" rather than "charges" (one charge can have a number of counts);
4. prohibits disclosure of a photograph of a child charged with a capital or class A felony, but allows disclosure of other information about such a child, including his custody status;
5. removes the requirement that a police officer serve a written complaint and summons on a child and his parents if the child is referred to a diversionary program; and
6. requires a detention center that is at or above capacity to accept a child under an order to detain (an order filled out by police and signed by a judge).

BACKGROUND**Serious Juvenile Offense**

Over 50 crimes are listed as serious juvenile offenses. They include all of the class A, most of the class B, and many of the class C felonies. They must also include drug crimes, carrying a handgun without a permit, manufacturing bombs, and several loan-shark type offenses. Children accused of serious juvenile offenses face more severe consequences than other juveniles.

COMMENT**Conflicting Sections**

Sections three and 11 both amend the same statute. They contain different and conflicting procedures for automatically transferring juveniles to adult court. In section three the transfer occurs unless the adult court state's attorney moves otherwise. In section 11 the transfer occurs unless the juvenile prosecutor moves otherwise.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 39 Nay 0